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The NEW NONCONFORMIST;

OR,

Dr. *SHERLOCK*'s

C A S E

Fairly Stated and Examined.

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THE  
NEW NONCONFORMIST:  
OR,  
Dr. *SHERLOCK*'s CASE  
IN  
PREACHING  
AFTER A  
DEPRIVATION

Incurr'd by the Express Words of a Statute:

Fairly Stated and Examined.

With short Reflections upon Mr. *Cook*'s Sermon, *Feb.*  
*2. 1692.* which was Licens'd by the Arch-Bishop's  
Chaplain.

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L O N D O N :

Printed in the Year. MDCXC.

THE NEW YORK

OF THE

PRELIMINARY

DEPRIVATION

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OF THE  
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THE  
**NEW NONCONFORMIST:**  
 OR,  
**Dr. SHERLOCK's CASE**

In Preaching after  
**DEPRIVATION**

Incurr'd by the Express Words of a Statute:

**Fairly Stated and Examined.**



*R. Sherlock*, who was at the time of the Act, for the *Abrogating of the Oaths of Supremacy and Allegiance*, and appointing other Oaths, *Master of the Temple, Rector of one Parish Church in the City of London, and Lecturer of another*, neglected or refused to take the Oath of Allegiance to King *WILLIAM* and Queen *MARY*, and the *Oath of Supremacy*, as is required

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quired by that Act, of all Persons then having any Ecclesiastical Dignity, Benefice, or Promotion: Under the Penalty of Suspension from the Execution of his or their Office, for neglect or refusal, till the first of August, 1689. for six Months, to be reckoned from the said first of August, and of being Deprived of his and their Offices, Benefices, Dignities, and Promotions Ecclesiastical, for such neglect or refusal, till the end of those six Months.

He discontinued Preaching from the said first of August, to the Second of February, 1689. being the first Sunday after a Prorogation of the Parliament, which enjoyned the Oaths; then he began again to Preach, and Prefac'd his Sermon with a Declaration, That he did it with the Permission of his Superiours, and the Advice of some of the most Eminent Lawyers.

Before I particularly consider the Merits of the Case, for the better understanding the weight both of the Permission and Advice: It may be material to ask,

1. Whether the Permission of Superiours, were more than a *Not* forbidding the Doctor to Preach, if he might by Law?

2. Whether if any Superior permitted positively, he were not one, who himself stands depriv'd by the Words of that Act?

3. Whe-

3. Whether any *Permission* of *Superiors* can avail without such a *Dispensing Power*, as themselves have denied?

4. Whether if the *Prorogation* were not the sole Reason of the Opinions of the *Lawyers*, they would not have advised the Doctor to Preach while the *Parliament* was Sitting? The *Suspension* to which he submitted, having upon more plain Resolutions in Law, than they can produce for their Opinions, expired at the end of six Months, from the First of *August*; reckoning four Weeks, or eight and twenty Days to a Month.

5. Whether, if prudential Considerations warranted the Doctor's forbearing the Exercise of his *Ministry* while the *Parliament* was Sitting, Prudence in regard to the Publick Peace, ought not much rather to have occasioned a forbearance upon the *Prorogation*?

6. Whether the *Lawyers*, who gave the Doctor the Advice, which he followed, were not such as to the last oppos'd our present Settlement, upon Supposition that this *King* ought to have been but a *Regent*, or Administrator of Affairs under the Late *King*: And by consequence, That neither the present Settlement, nor any other Transactions of this *Parliament* were regular or just?

7. Whether

7. Whether this notwithstanding, some of the *Lawyers* whom the Doctor consulted, had not themselves taken the new Oaths, after having Sworn Allegiance to the Late King? And therefore, whether the Doctor did not upon that account either think them to have been Perjur'd, or of Judgments not to be relied on in such a Point of Law?

If according to the Popish Doctrine of Probability, the Opinion of so many *Lawyers* might warrant the Doctor's Acting accordingly; why would not their Opinions and Practice as well prevail upon him to take the Oaths, as being according to the Laws of this Government, which they are presum'd to have Studied more than he has done?

If it be said, That to take the Oaths, is against his Conscience, but to Preach is not. That signifies nothing here. The Question being only, Of the Validity and Weight of the Opinions.

8. Whether one of the *Lawyers* had not been made a Judge, for Signing an Opinion for the Legality of a Standing Army in the time of Peace; and declaring, That a Person under a *Parliamentary Impeachment*, might be Tryed in the *King's Bench*? And whether he did not venture upon such a Tryal, tho it was admitted in the Pleadings, that the Impeachment was lodg'd in the *Supream Court of Judicature*?

And

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And whether he did not give sufficient Proof of his Skill, in saving a Foreign Count, which might have been more commendably employ'd in helping an *English Great Man*, who at least deserv'd Justice, and that the Law on his side should have been declared as plainly, as it had been when the Lord *Shaftsbury* was Tryed at the *Old Bayly*?

9. Whether another *Lawyer's* Opinion may not be thought more an effect of Revenge for a Publick Mark set upon him in that *Parliament*, than of Judgment? Or, Whether, however, any thing but his Place and Countenance ever gave value to his Judgment?

10. Whether another of the *Lawyers* had not maintained, in order to take away Mens Lives, "That *Scribere est agere*, Writing is an Overt-act of Treason, within the 25 of E. 3.

11. That though, in the Judgment of several *Parliaments*, it has been found needful to have temporary Laws, to make Words spoken or written Overt-acts of Treason, yet no man ever doubted but words alone may be Acts of Treason within 25 E. 3.

12. That, how manifest soever the distinction of kinds of Treason be, within the Statute; whatever the Opinion of the Lord *Coke*, or the Case of the late, or any former *Revolution*, yet no man ever doubted but a Conspiracy to Levy

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War, is a Conspiracy against the Life of the King, within that Act.

That the Meeting where the Levying War was discours'd of, without Proof of the Party's knowing the end of the Meeting; and a bare Agreement in others of the Company to seize Guards not Established by Law, were *Overt-acts* within that Statute, in a Person against whom no Words or Deeds were prov'd, expressing his Consent to any such Matter.

13 Car. 2. c. 1. And, to crown the whole, That, notwithstanding the expresse Provision of the Statute 13 Car. 2. That no person shall incur any of the Penalties mentioned in that Act, unless he be prosecuted *within Six Months*, and Indicted within Three, after such Prosecution; yet a Man might have been lawfully Prosecuted for Treason, within that Act, *after the six Months*.

To come more particularly to the Question, it will be requisite to lay before the Reader,

I. Part of the respective Forms of the Ordination of *Deacons* and *Priests*.

II. The disabling Clause in the Statute of the Queen, enjoying the Oath of Supremacy.

III. So much of the Act of Uniformity as looks that way.

IV. And

IV. And then so much of the last Act, for the Oath, as concerns the present case.

1. The Form of Ordaining a Deacon, has these words:

Take thou Authority to Read the Gospel in the Church of God, and to Preach the same, if thou be thereto Licensed by the Bishop himself.

The Form of Ordaining a Priest, has these words:

Take thou Authority to Preach the Word of God, and to Minister the Holy Sacraments in the Congregation, where thou shalt be lawfully appointed thereunto.

2. The Statute 1 Eliz. has this Clause:

If any Arch-bishop, Bishop, or other Ecclesiastical Officer or Minister, shall peremptorily or obstinately refuse to take or receive the said Oath, he shall Forfein and lose only during his Life, all and every Ecclesiastical and Spiritual Promotion, Benefice, and other Office, and the whole Title, and Interest, and Incumbency, in every such

1 Eliz. c. 1.

Promotion, Benefice, and other Office, as against such Person only, so refusing, during his Life, shall clearly cease, and be void, as tho the Party so refusing, were dead.

3. The Act for Uniformity 14 Car. 2. provides,

14 Car. 2. c. 14.

That every Parson, Vicar, or other Minister whatsoever, who at that time had and enjoyed any Ecclesiastical Benefice or Promotion, within this Realm of England, or Places there mentioned, shall do as is thereby appointed, before the Feast of St. Bartholomew, 1662. upon pain that all and every such Person who shall (without lawful Impediment, to be allowed and approved of, by the Ordinary of the Place) neglect or refuse to do the same within the time aforesaid, or within a Month after the Impediment removed, shall ipso facto, be Deprived of all his Spiritual Promotions. And that Persons after that time to be put into any Ecclesiastical Benefice or Promotion, shall do as is thereby required, within Two Months next after he shall be in Actual Possession of the said Benefice or Promotion, upon the same Penalty.

It also provides, That Persons not Episcopally Ordained, shall be utterly disabled, and ipso facto Deprived of Parsonages, Vicarages,

**Aicarages, Benefices with Cure, or other Ecclesiastical Promotion.**

And farther, That no person shall be suffered to Preach as Lecturer, or to Preach or Read any Sermon or Lecture, unless he be Licensed by the Archbishop, or Guardian of the Spiritualities; and in the presence of the Archbishop, or Guardian, read the Nine and Thirty Articles, with a Declaration of his unfeigned Assent and Consent to the same.

And that every person who then was, or after that should be Licensed, the first time he preaches, before his Sermon; shall openly, publicly, and solemnly read the Common-Prayer to be read for that time of the day; And then and there publicly and openly declare his Assent unto, and Approbation of the said Book, and to the Use of the Prayers, Rites and Ceremonies, Forms and Orders therein contained and prescribed. And if he neglect or refuse to do the same, shall from thenceforth be disabled to Preach the said, or any other Lecture or Sermon, in the said, or any other Church, Chappel, or any other Place of Publick Worship, till he do as aforesaid.

And if he Preach during such Disability, shall suffer three Months Imprisonment without Bail or Mainprize.

4. That

1 W. &amp; M.

4. The Act for Abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths, Provides, That all Persons (other than such concerning whom other Provision shall be made in that Act, or in any other Act of that Sessions of Parliament) that shall after that time be admitted into any Office or Employment Ecclesiastical, or Civil, or come into any Capacity, in respect, or by reason whereof they should have been obliged to take the Abrogated Oaths of Allegiance and Supremacy, shall upon neglect or refusal of the new Oaths incur, and be liable to the Penalties, Forfeitures, Disabilities, and Incapacities, as by any other Statute was appointed for, or upon Neglect, or Refusal.

This Clause related only to them, who should come into Offices after the making the Statute. Another provides for such as then enjoyed any Ecclesiastical Offices; in these Words,

And be it further Enacted by the Authority aforesaid, That if any Arch-Bishop, or Bishop, or any other Person, now having any Ecclesiastical Dignity, Benefice, or Promotion, shall neglect or refuse to take the Oaths by this Act appointed to be taken in such manner as by this Act is directed, before the first Day

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Day of August, in the the Year 1689, every such Person and Persons so neglecting or refusing, shall be, and is, and are hereby Declared, and Adjudged to be Suspended from the Execution of his, or their Office, by the space of six Months, to be accounted from the said first Day of August. And if the said Person, or Persons, (so having neglected or refused) shall not within the space of Six Months take the said Oaths, in such manner, Court or Place, as they ought to have taken the same before the said first Day of August, Then he or they shall be Ipso facto, Deprived; and is, and are hereby adjudged to be Deprived of his or their Offices, Benefices, Dignities, and Promotions Ecclesiastical.

I conceive it will appear upon Consideration of the Forms of Ordination, the several Clauses of the abovementioned Statutes, and the Circumstances of the Case and Person,

That if the Doctor were not within the Statute 1 W. & M. barely upon the Account of his *Lecture*, yet that he was so beyond Dispute, as he had a *Dignity* and *Benefice* Ecclesiastical; being at the making of the Act, *Master of the Temple*, and *Rector* of a Parish Church.

1. The Suspension was not only in its own Nature, but of the Doctor's admitting, a Suspension

sion from the Exercise of his Function or Office of a Minister; otherwise he was guilty of a notorious neglect of his Duty, in not Preaching any where during the time of the Suspension.

3. The *Deprivation* is as extensive as the *Suspension* was; the only difference being in the propriety of expression; it not being proper to say that a Man is Deprived of the Execution of an Office, though he may well be said to be Deprived of the Capacity to execute; which is the Office, and to be suspended from the Execution. But a total Incapacity or Disability to Execute, naturally and legally follows a *Deprivation* from the Office.

The Refusal till the first of *August*, is agreed for Six Months to suspend the Execution of the Office, that is, for so long to forbid Preaching, as an Exercise of the Office. But is it to be supposed, That in the Intention of the Law-makers, an obstinate refusal, after the time given them to consider, shall affect the Execution of the Office less than a refusal before it may be thought obstinate? Or, indeed, Can a Man be said legally to execute an Office of which the Law has Deprived him?

If a *Deprivation* follows a *Suspension*, what is that at the first view, but a total Discharge from the Execution? whereas the *Suspension* was but a temporary one.

4. If we have recourse to the *Canon Law*, a deprivation is ordinarily but the same with perpetual or indefinite Suspension; and therefore where the *Canon Law* wholly forbids those, who fall after Ordination, to Administer the Sacraments, the Gloss says it is proved by Examples and Authorities, that after Repentance, they may *propriis gradibus administrare, & ad majores consecrere*, "execute what belongs to their proper Orders, and rise to higher." A perpetual Suspension from the Office alone, is a Suspension from the Benefice which is given for the Office; and as 'tis held by *Linwood*, though it be Temporary, if it be for a great cause, it implies a Suspension from the Benefice; and whatever be the Cause, and whether a *Canone*, from the words of the Law, or *ab homine*, the Sentence of a proper Judge, if he who is publickly denounced suspended *immissceat se divinis*, "Preach or the like, before the Suspension is taken off, he becomes irregular, that is, is depriv'd of his Order; and he who is irregular is elsewhere said to be suspended *ab officii executione*, "From the Execution of his Office. To say that he who is suspended, if he act as a Minister, during the Suspension, shall be suspended, seems a Bull: but in truth is, he who acts during a Temporary Suspension shall incur a perpetual or indefinite one, that is, be deprived. Wherefore though the Doctor's six Months suspension is determined, his deprivation or indefinite suspension taking place, the Execution of the Office is still restrain'd, and even by  
C the

*Corpus Juris  
Canon. p. 162.*

*Linwood lib.  
1. cap. de Con-  
stitutionibus.*

*Linwood de  
temp. ordinandis  
fol. 47.*

the Canon Law he becomes *irregular* for Preaching while he lyes under this Restraint.

5. The word *Offices* in the Statute, is used either in relation to several Persons respectively, or rather is intended to take in the several *Offices*, or *Orders* of Churchmen which any Person *Dignified, Beneficed, or Promoted* may be of, as *Bishop, and Priest or Presbyter, Presbyter and Deacon*, or all three, if they are so many distinct *Orders*, as some contend.

All agree that an Order in the Church is a *capacity* to some peculiar Act; every such capacity is a distinct *Office*; and *vice versa*, every distinct *Office* is a capacity to a peculiar Act. Whatever totally or indefinitely suspends the *Capacity*, equally suspends or affects the *Office*, and by Consequence the *Order*: And whatever totally suspends or deprives from the *Office* or *Order*, equally restrains the *Capacity* to Execute.

No Man doubts but there may be two *Orders* at least, whoever has either of them has an *Office*, and whatever Office any Clergyman had in the Church at the making the Act, he is deprived, that is totally and indefinitely suspended from the *Execution* of it, unless he have qualified himself as the Act requires.

6. That

6. That by *Offices in the Act, Orders or Functions* are particularly intended, and not *Places or Preferments*, appears not only in that *Offices* are exprest before and besides them; but whereas the *Persons* at the time of the *Act* subject to deprivation, are only such as then had *Dignities, Benefices, and Promotions Ecclesiastical*, the Penalty is made to extend to the *Offices* as well as to the *Dignities, Benefices, and Promotions*.

7. No Man can doubt but the Penalty in relation to such as at that time were *Dignified, Beneficed, or Promoted*, was designed by the Law-makers to extend as far as the Penalties upon them who should after that time be admitted into any *Office or Employment Ecclesiastical*.

Nay there would seem to be greater need of Caution against them who were in *Office* then, and might have the pretence of being required to take contrary Oaths now; than against them who were to come in *de novo*, and after the Government had been longer settled. But it appears by the continuance of the Penalties in the Statute 1. *Eliz.* against such as being after that time admitted into any office or employment Ecclesiastical, shall neglect or refuse to take the new Oaths, that every such neglecter or refuser is adjudged to forfeit and lose his office. And that all his Title, Interest, and incumbency, shall cease and be void as much as if he were dead.

And in such Case I am sure there can be no exercise of any Function.

Linwood de  
Constitutioni-  
bus sup.

8. That I am not mistaken in supposing that Office reaches the Order, is very plain by the Canon Law. Linwood says, where a Man incurs a Temporary suspension for a Crime, if he repent within the time, the Suspension *non impedit ordinis Executionem*, "Does not hinder the Execution of the Order. And speaking of a Bishop suspended, says, Some things belong to the Order, some to Jurisdiction; and that he who is suspended from the Office, cannot do what belongs to the Office, Administer the Sacraments, or the like; but is not restrained from Matters of Jurisdiction, where order and office are manifestly the same: and speaking of irregularity denounced by a Law against one, *qui immisceat se divinis*, Acts in the Ministry during a Suspension, says, *Satis ostenditur fuisse de mente Statuentis, quod esset suspensus ab officio ordinis*. It is plainly enough the mind of the Lawmaker, that he should be suspended from the office of his Order.

Corpus Juris  
Canon. de Crimi-  
nibus c. 16.

So ib. p. 170.

*Hi qui depre-  
hensi vel capti  
fuerint publice*

*in perjurio, furto atque Fornicatione, Et ceteris hujusmodi criminibus, secundum Canonum Statutorum instituta, a proprio gradu decedant.*

The Canon Law provides, That every Bishop, Presbyter, or Deacon, that takes or keeps a Woman, shall be deprived from his Office and Benefice: which is there explain'd by *Proprio gradu decedat usque dum ad satisfactionem veniat*, he shall be de-

graded,

graded, or fall from his proper Order till, he give satisfaction; that is by penitence.

And in the Contents of the Fourteenth Chapter of Crimes, *its Clerici post lapsum in suis Ordinibus reputari possunt.* Clerks after a Fall, or after Penitence, as in the Fifteenth, may be reputed to be in their proper Orders.

This Deprivation or Degradation therefore being, as is before shew'd more at large, but an indefinite Suspension, it removes the great offence which the Clergy may take at Statutes depriving them of their Office, or incapacitating them for discharge of their Function.

vid. Godolphin's  
Repertorium  
Canon. p. 306.

9. That Reformation of the Ecclesiastical Laws, which was compos'd by Two and thirty Divines, Civilians, and others, 6 E. 6. calls Deprivation *Dejectio de dignitate*, a Dejection, or Degradation from the Dignity. Wherefore if the Word Offices would not take in the Orders in the Church, at least the Ecclesiastical Dignity express'd in the Statute does. Wherefore he who does not take the Oaths thereby required, being adjudged deprived of his Ecclesiastical Dignities; this, as that Reformation speaks of the Sentence of Deprivation, is *Horribile velum in sanctam ordinem quorum-  
cunque personarum Ecclesiasticarum missam*. "A  
"dreadful Dart thrown at the Holy Order or Fun-  
"ction of all sorts of Ecclesiastical Persons.

Reformatio le-  
gum ecclesiast.  
ex autoritate  
primum Regis  
H. 8. inchoat.  
De deprivatione  
cap. 1.

Ib. cap. 4.

And;

And that the Act takes *Dignity* in the same Sense that the Reformers of the Ecclesiastical Laws did, appears, in that otherwise it would be defective, and no sufficient Remedy against the Mischief which it manifestly intends to prevent: and a bare *Lecturer* having no *Benefice*, would not be within the Act, unless his place were within the Word *Promotion*. But it is much rather to be thought, that his Order of *Priest*, or *Deacon*, is a *Dignity*, than that a *Lecturer's* Place is a *Promotion*. And if they, who at the time of the Act, were only *Lecturers*, might have liberty of preaching, though they are of another Allegiance, they may instil as much Sedition, and yet receive as much Profit under that Government which they oppose and weaken to their Power, as those who are *Beneficed*.

10. Preaching being a Faculty belonging to an Ecclesiastical Office or Order in the Church, the Doctor is bound to be silent, unless it be granted that *Laymen* may preach the Gospel.

If it be said that he has a *Bishop's Licence* since the *Deprivation*; that is not to be presumed; for either the *Deprivation* was as full as a *Deprivation* in the Ecclesiastical Court, *ab officio & beneficio*, or it was not; if it was as full, I hope he will not say that he might preach, especially in the same Diocese where he was deprived, till he were

were formally restor'd by his Ordinary, or at least had testified his Repentance: If it were not as full, then certainly they who thought themselves obliged to *degrade* or deprive one of their Brethren, by reason of an Indictment transmitted to them from the *Kings Bench*; and that where the Offence, if any, was not within their Canons, and only against one who stood next in Succession to the Crown, ought to proceed to a formal Deprivation of one whom they are by a known Law bound to deprive, if he be not already deprived, for refusing to swear Allegiance to a King and Queen in Possession. And since he preaches, as it were, in defiance of the Act, they may seem more particularly obliged to vindicate the Honour of the Law, at least to tender him the Oath of Supremacy according to the Power given the Ordinary by the Stat. 5 *Eliz.* and which the late Statute obliges him to execute. Upon the refusal of which the Office would cease as much as if the Doctor were dead.

Nor could he reasonably complain of this, he having been one of them who degraded or deprived Mr. *Johnson*; upon which they have seemed to think him a meer *Layman*.

If the Dr. preach as licens'd since his Deprivation, he ought, according to the Statute 14 *Car. 2.* before his being licens'd *de novo* to have read the Nine and thirty Articles, with Declaration of his *unfeigned assent and consent to them*; and the first time

time that he preach after such Licence to have read the *Common Prayers*, and publicly and openly to have declared his *assent* and *consent* unto, and approbation of the Book of Common Prayer, and that as altered with the Names of our present King and Queen inserted.

11. If the Doctor may preach notwithstanding the Deprivation from his Offices, much rather might the *Dissenting Ministers*, who were turn'd out by the *Bartolomew Act*; though that Act disables and deprives them of their Benefices and Promotions, and makes it penal for them to preach, unless they qualifie themselves as the Act requires: yet it no where totally deprives them of their Office, the power of administering the Sacraments at least remain'd: And there might be some Colour for arguing that the Office could not be divided, and that the Office remaining with some part of the exercise of it untoucht, might draw to it the other incidents, especially in them who did not receive a qualified Authority to preach the Gospel.

If therefore it be said there was a Penalty annex'd to preaching after Disability, but here is none to preaching after Deprivation; that rather shews that the Suffering the Penalty answers the Law, than that the Penalty confirms the disability. But if any argue from hence, that the Law which deprives of the Offices, has no Sanction for want of a Penalty; it is to be considered, that

that the *Deprivation* is its self a Penalty, and besides, the *Common Law* provides for punishing them who usurp Offices, and who act against the Prohibition of Statutes.

12. If the Doctor will preach as a *Dissenting Minister*, he may consider, that even before the *Toleration*, those of them who were not Episcopally ordained, might as well as he have preached in Lectures, if they would have qualified themselves by a *Conformity* to the *Act*. And yet if the Doctor will preach, either as a *Prebender* to *Holy Orders*, or a *Gifted Layman*, he is bound by the same *Act* to give regular notices where he will hold his *Conventicle*; nor can be exempted from former Penalties against *Conventicles*, unless he take the Oaths which he has refused; or if he scruple all Oaths, solemnly profess and declare, that he will be true and faithful to King William and Queen Mary, and profess Faith in God, and in Jesus Christ his eternal Son, the true God, and the Holy Spirit, one God blessed for evermore, &c.

Act for Toleration, 1 W. M.

13. It appears by the Form of Ordaining a *Deacon*, That he is not to preach as such, unless licensed by the Bishop; and by that of a *Priest*, That he is not to preach in that capacity, but where he is lawfully appointed thereunto. Whereby it appears, that the Authority to preach the Gospel is not given our *Divines* absolutely, but *sub modo*, either as there is a legal Licence remaining in force, or a lawful Appointment to a place.

D

But

But if the Bishop license one who stands deprived, and the Deprivation as I have shewn reaches the Office or Orders, what is that but a dispensing with the Law? And how can a Man be lawfully appointed to preach, who is by Law disabled? The same Law which appoints the Form of the Ordination, adds the qualification at the time. And every conforming Minister declares his assent unto and approbation of the qualification or restraint of the Authority to preach, viz. If licensed or lawfully appointed. By the same reason that the Orders or Office are subject to such a Qualification, they are subject to others from the like Authority. And whatever Clergyman of our Church denies the Power of this Act to deprive him of his Office, condemns that very Ordination, by which he received Authority to preach the Gospel, and renounces the assent and approbation, which he had solemnly given.

14. It must not be denied but the Words of a Statute Law may work a Deprivation without a Sentence in the Ecclesiastical Court. Godolphin agrees, that Deprivation may be either by a particular Sentence in the Spiritual Courts, or by a General Sentence by some Positive or Statute Law of this Realm, wherein he but transcribes the learned *Doderidge*; Indeed that Learned Man speaks of Cases wherein the Law adjudges not the Church actually void without a Sentence of Deprivation; yet Sta-

Godolph. Rep.  
Can. p. 306.

Doderidge  
Compleat Par-  
son p. 72.

Statutes may make Churches void *in facta*, which before those Statutes were *in iure* voidable by deposition; as particularly has been adjudged upon the 13 and 31 of Eliz. and it was held for a Rule in arguing a Case upon 31 Eliz. which deprives for Symony, That where a Statute makes a thing void, it shall be void according to the Words of the Statute, unless there shall be some miracle or pre-judice to him for whom the Statute was made.

1 Inst. f. 120.  
6. Rep. Green's  
c. Crook, Eliz.  
Baker and  
Brent's c.  
Marsh's resp.  
17. Car. 1. p.  
87. Rous. n.  
Wright.

The Question therefore being, whether the Statute does disable from the execution of the Office, and deprive as much as a Civil Law can? It is to be observed, that it is not only enacted, that such persons shall be *in facta* deprived: In which case, notwithstanding the resolutions in our Law, some will think there is need of a future Deprivation by Ecclesiastical Superiours, but they are adjudged to be deprived actually: So that here is a Judgment of Parliament, where every Man's consent is involved, and that of all the Bishops particularly included or implied, importing as much as a Sentence in the Ecclesiastical Court, of Deprivation *ab officio & beneficio*, with this difference, That if a Sentence in the Ecclesiastical Court may be thought limited to a particular Diocess, one by Parliament extends as far as the Laws of England do.

16. Admitting that a deprivation from the Office were not known in the Ecclesiastical Court,

or had not a full effect even within a particular Diocess; yet the Circumstances plainly evince what the Parliament meant by a Deprivation from *Offices and Dignities*: but since as much as I contend for, is the known effect of such Deprivations by the *Canon Law*, our Law is at least to be thought to intend as much as the common Acceptation and Import of the words, according to that Law where they have been first or most used.

17. The Question is not whether Acts of the Ministry, Baptizing of the like, are valid or no, notwithstanding a Deprivation; for this relates not to the Effects, but to the Allowance or Permission of the Acts, according to Human Laws. Their suppos'd indelible Character therefore is left, and yet they ought not to Preach or do other things belonging to the Character, according to their known distinction in relation to the Power of Kings, which they say is absolute in all; but the exercise of the Power may be restrain'd by the Laws of particular Countries. And as Dr. *Sherlock* holds, A King's most illegal Act to have the Authority of Sovereign Power; so may he Preach against Law, with the Authority of a Minister of the Gospel, and yet be far from maintaining his own Doctrine of *Non-resistance*, unless he absolutely disown that Power, which God and the Law have set over him.

18. All must agree. That whether we are to reckon by *Lunary* or *Kalendar* Months, the Deprivation intended by the Act, incur'd before the *Doctor* began to Preach.

Upon the whole I know not what reason can be assigned for his Preaching when he did, but that the *Parliament was Prorogued*. I have shewn it at least not to have been so plain a Case in Law, for his Preaching, that any Lawyer who had regard to an Act of Parliament, would give such an Opinion. Heretofore when any Question came before the Judges, which might require the Explanation of the Law-makers, it us'd to be adjourn'd to the next Parliament; but this it seems is a more Learned Age.

If it be Lawful for the *Doctor* to Preach without the Qualifications above mentioned, it is as Lawful to justify it; for those Reasons which will not bear the light, cannot be thought to, excuse upon any Indictment, or popular Action brought; wherefore I have given this early state of the Case, with what has occur'd to me upon it, that truth may the better appear and prevail. I have purposely waved some Reflections, to which the timing this Contempt of a Parliament might provoke an *English* Man. Nor have I applied that charge of *Schism*, which some seem at last to have drawn upon themselves. This I shall only say,  
That

# The New Nonconformist.

That some who have Preacht up *Passive Obedience* to illegal Commands, will not sit still under Legal ones, when they thwart their Interest or Humours. And though their Doctrine has been sufficiently baffled: yet, since Men vers'd in School-distinctions may make Disputes endless; nothing but their own Contradictions in Words or Practice, is likely to put them to silence.

## Short Reflections, &c.

**H**ere I should have ended the Reader's trouble upon this occasion, had I not met with another Face of the Controversie, in a *Tham Imprimatur*, May 12. 1888. to a Sermon preach'd Feb. 2. 1888. by *Shadrach Cook*, whose Name is to serve as an Emblem of his *Plow*, who are to be thought to have gone through the *Fierie Furnace*: And if they expect another Person to appear to them in the midst of the Flames, 'tis doubtless the late *King*; their Expectations from him shew the vanity of the *Moon* which this *Shadrach* has assumed to himself.

*Quem*

blond? .notatino? Injui? hua monition? sili? or .s.v. r. d. m. 9

*Quemcumque forte videris miserum, nega-  
"Call not him wretched who you find is brave."*

Were there the like use of *Innocence* now, as when Mr. Roswell and Mr. Baxter were prosecuted for the hidden meaning of their Words, Mr. Cook's choice and siting of his Text, would be look'd on as an Evidence that, according to him, they who come not up to his fancied Fortitude, while he is back'd and encourag'd with Contributions, are ashamed of Christ and of his Word: or, to use Mr. Cook's Expressions, are guilty of the basest Impudence, the most cowardly Hypocrisy. Nor will I dispute this point with him, in relation to them who swear Allegiance to this King and Queen, and yet believe that they still owe Allegiance to the late King. Should his Forces in Ireland be totally routed, all hopes of Assistance from France lost, and as a natural consequence of these, his Party here dwindle away, and Mr. Cook be dismiss'd from his *Calumnies*, then *Shadrach* might be thought to be called to his *Fiery Trial*; and should he do as some of his Brethren, he might plead in excuse of his Frailty, That Miracles are cease; and nothing less than an Extraordinary Assistance of the Divine Spirit could carry him through such an extrem hardship and difficulty, and make him maintain a close and steady adhesion to an honest Cause, which his Publisher, as a new distinctive Note, calls the Old Church of England, opposite

His Text,  
Mark 8. 38.  
Sermon, p. 6.

Sermon, p. 12.

Ibid. p. 16.

Publisher, p. 2.

Page 14.

to this *Adulterous and Sinful Generation*. Should he withdraw his *Faith and Allegiance from God*, and set up a *profess Hostility and Rebellion against him*, in deserting, or any wise forsaking or denying his *Old Church of England*, what could be said but that *Sheweth* of himself is frail, without extraordinary Assistance and Support from one to rise to him in the midst of the *Fiery Tryal*.

I would by no means bring an Accusation from *Innuendoes*, but Mr. Cook's Sermon, by such a Man as his *Bigotted Publisher* at least, may be taken for a dreadful denouncing of God's Judgment against the *New Church of Englandmen*, that is, they who are not for a *Protestant Church* with a *Popish Head*.

This may shew the danger of their preaching who have not taken the Oath of *Allegiance* to our King and Queen, without which, what they talk of *Faith and Allegiance, Hostility and Rebellion*, will be liable to such Constructions, especially by such Enthusiasts as his Publisher, who thinks himself more than *ordinarily inspired*, because he *so luckily* occasions the *broaching* this Sermon, an Allusion certainly taken from the Barrel dedicated to the Pious Memory of this Discourse, which had perhaps otherwise been crowded with its *lazy Companions* to a perpetual Silence.

Vid. Pref.

Vid. Pref.

All

All the rest, it seems, are *lazy Companions* for the Rats and Mice, fit to be crowded to perpetual silence, among Lumber and waste Paper. But this *Publisher*, whose Style is so like his Preacher's, that he shews himself not to have been an unprofitable Hearer, would have Two material Points believed without disputing them.

1. That the Archbishop of Canterbury's Chaplains licensed this Sermon, after the Second of February 1633. which if he did not, 'tis a base Cheat upon the World, an Art to misguide the Unthinking: and if Mr. Cooke were privy to this, he would deservedly bring a Suspicion upon the Grounds of his *Nonconformity*. But if the *Chaplain* did license this after the Second of February, 1633. Here is an Act flowing from the Jurisdiction given the *Archbishop*, by a Statute Law, exercised after the *Archbishop* had been deprived of his Office, or Offices, Dignities and Promotions Ecclesiastical; and if, according to the *Canonists*, *Vid. sup. p. 20.* Office relates more particularly to the Order; yet the *Dignity* and *Promotion* take in the Jurisdiction given by any *Civil Law*, as the Office does, whatever *Jurisdiction* may be thought to be annex to it by *God's Law*.

2. He will have it, that Mr. Cooke, has a legal Claim to the Pulpit at *Islington*, which he is *Publisher* bold to say from the Authority he has to it, and

compares his Case to that of the *London Rector*; so that he goes not upon his supposed Authority to preach the Gospel, notwithstanding the Deprivation; but denies the *Deprivation* it self, and urges a Title in Law to that particular Pulpit, which perhaps *Dr. Cave* may dispute with him: however this sets aside all nice Disputes about the import of the Words, *Offices, Dignities, Benefices,* and *Promotions*, being in effect a denying the Authority of the Law it self. The *Church-Warden's* denying the use of the Pulpit to one deprived by the *Statute*, he calls an Act from a *single Lay-Authority*; the *Statute*, it seems, is of no *Authority*. Certain it is, that these Men by pretending to a Licence since the Sermon was preached, and to a Legal Title in Mr. *Cooke* to the *Pulpit* at *Islington*, would be thought among their *Party*, to contest the Authority of the Law, at least the *London Rector* does, who has brought his Action against the *Church-Warden* for shutting the Church Door against him.

Publisher p. 2.

I appeal to all Mankind, whether they deserve any Countenance in a Government, who openly deny the very Foundation upon which it stands; and if their Faction could prevail in the Elections for the ensuing Parliament, it would soon appear what favour they deserve of *King William*.

They

They who are sensible of this, and therefore would keep them under, must be thought against the *Church of England*, as if only the few *Nonconformists* make the Church, as *Athanasius* was thought to do in ancient times : Or because the Archbishop of *Canterbury* holds off, the *Old Church of England* cannot remain, at least in the *Province of York*. But why cannot this King be as immediate an Head of the Church of *England* in the vacancy of the See of *Canterbury*, as his Predecessors used to be ?

Sure I am, whoever will say that the See of *Canterbury*, and the *Rectories* of *New-noncons* are still full ; if they durst, would say that the Throne is still full of *King James*.

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FINIS.

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